

AMENDED IN ASSEMBLY MAY 2, 2005

AMENDED IN ASSEMBLY APRIL 26, 2005

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 380

Introduced by Assembly Member Nunez

February 11, 2005

An act to add Sections 380 and 9620 to the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 380, as amended, Nunez. Electricity: electrical restructuring: resource adequacy.

The California Constitution establishes the Public Utilities Commission, and provides it with jurisdiction over all public utilities. The Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities.

The existing Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. Existing law relative to electrical restructuring, authorizes electrical service to be provided, in certain circumstances,

by electric service providers, as defined, and community choice aggregators, as defined.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission) and requires it to undertake a continuing assessment of trends in the consumption of electricity and other forms of energy and to analyze the social, economic, and environmental consequences of those trends and to collect from electric utilities, gas utilities, and fuel producers and wholesalers and other sources, forecasts of future supplies and consumption of all forms of energy. Existing law requires the Energy Commission, beginning November 1, 2003, and every 2-years thereafter, to adopt an integrated energy policy report which includes an assessment and forecast of system reliability and the need for resource additions, efficiency, and conservation.

This bill would require the commission, in consultation with the Independent System Operator (ISO), to establish resource adequacy requirements to ensure that adequate physical generating capacity, dedicated to serving all load requirements, is available to meet peak demand plus requisite planning and operating reserves, and would require the commission to implement and enforce these resource adequacy requirements in a nondiscriminatory manner on all load serving entities, with certain exceptions. The bill would make specified enforcement provisions within the Public Utilities Act, applicable to all load serving entities, with respect to these resource adequacy requirements *and would require the commission to impose a penalty upon any load serving entity that fails to procure adequate generational resources in violation of an order or decision of the commission, in an amount sufficient to deter violations.* The bill would require that the cost of meeting resource adequacy requirements, including the costs associated with system reliability and local area reliability found reasonable by the commission, be fully recoverable from all customers taking service from an electrical corporation on a nonbypassable basis at the time the commitment to incur the cost is made or thereafter. *The bill would prohibit an electrical corporation from recovering from ratepayers, any cost that would have been avoided if the electrical corporation had procured adequate generational resources as required by an order or decision of the commission.* The bill would require that all load serving entities, including electric service providers and community choice

aggregators, are subject to the same requirements for resource adequacy, resource diversity, cost-effective energy efficiency, and the renewables portfolio standard, as are applicable to electrical corporations. The bill would require the commission, in consultation with the ISO, to require all electrical load serving entities to report information to the commission ~~and to the Energy Commission~~, on anticipated load, actual load, and measures undertaken by the load serving entity to ensure resource adequacy. *The commission would be required to share information provided by load serving entities with the Energy Commission.* The Energy Commission would be required to utilize the information ~~reported~~ *supplied by the commission* in its biennial integrated energy policy reports.

Existing law relative to electrical restructuring states the intent of the Legislature that the state's local publicly owned electric utilities, as defined, and electrical corporations should commit control of their transmission facilities to the Independent System Operator.

This bill would require that every local publicly owned electric utility serving end-use customers ensure that adequate physical generating capacity dedicated to serving all of its load requirements is available to meet peak demand and planning and operating reserves, at or deliverable to locations and at times as may be necessary to ensure local area reliability and system reliability, at just and reasonable rates. The bill would require that every local publicly owned electric utility report to the State Energy Resources Conservation and Development Commission that information required by the commission relative to the utility's resource plan and status in meeting its resource plan, thereby imposing a state-mandated local program.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Certain provisions of this bill would be part of the act and an order or other action of the commission would be required to implement certain of the provisions. Because a violation of those provisions or an order or other action of the commission implementing those provisions would be a crime, and because the bill would make certain violations by a load serving entity a crime, this bill would thereby impose a state-mandated local program by creating new crimes and by expanding the definition of existing crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 380 is added to the Public Utilities
2 Code, to read:
3 380. (a) The commission, in consultation with the
4 Independent System Operator, shall establish a resource
5 adequacy requirements mechanism to ensure that adequate
6 physical generating capacity dedicated to serving all load
7 requirements is available to meet peak demand and planning and
8 operating reserves, at or deliverable to locations and at times as
9 may be necessary to ensure local area reliability and system
10 reliability, at just and reasonable rates.
11 (b) All electrical load serving entities, including nonutility
12 electric service providers and community choice aggregators,
13 shall be subject to the same requirements for resource adequacy,
14 resource diversity, cost-effective energy efficiency, and the
15 renewables portfolio standard program, that are applicable to
16 electrical corporations pursuant to this section, or otherwise as
17 required by law, or by order or decision of the commission. The
18 resource adequacy requirements mechanism shall be designed to
19 minimize enforcement requirements and costs, to prevent shifting
20 of costs, and to ensure that adequate generating capacity exists or
21 is brought online to timely meet identified resource adequacy
22 needs. The commission, in consultation with the Independent
23 System Operator, shall require all electrical load serving entities
24 to report information to the commission ~~and to the State Energy~~
25 ~~Resources Conservation and Development Commission~~, on
26 anticipated load, actual load, and measures undertaken by the
27 load serving entity to ensure resource adequacy. The commission
28 shall require sufficient information to be reported to enable the
29 commission to determine compliance with the resource adequacy
30 requirements adopted by the commission. The commission may
31 require a scheduling coordinator approved by the Independent

1 System Operator to provide information when necessary or
 2 useful to determine compliance by ~~lead~~ *load* serving entities with
 3 the resource adequacy requirements adopted by the commission.
 4 *The commission shall share information provided by the load*
 5 *serving entities with the State Energy Resources Conservation*
 6 *and Development Commission. The State Energy Resources*
 7 *Conservation and Development Commission shall utilize the*
 8 *information reported by lead serving entities supplied by the*
 9 *commission in the biennial integrated energy policy reports*
 10 *prepared pursuant to Section 25302 of the Public Resources*
 11 *Code.*

12 (c) The commission, in consultation with the Independent
 13 System Operator, shall implement and enforce these resource
 14 adequacy requirements in a nondiscriminatory manner as to all
 15 load serving entities. For purposes of enforcing the resource
 16 adequacy requirements established pursuant to this section, all
 17 electrical load serving entities, including those entities that are
 18 not electrical corporations, are subject to Sections 2101, 2102,
 19 2103, 2104, 2104.5, 2105, 2106, 2107, 2107.5, 2108, 2109, 2110,
 20 2111, 2112, 2113, and 2114. *In addition to any remedy or*
 21 *enforcement power that the commission may exercise pursuant to*
 22 *Chapter 11 (commencing with Section 2100), the commission*
 23 *shall impose a penalty upon any load serving entity that fails to*
 24 *procure adequate generational resources in violation of an order*
 25 *or decision of the commission made pursuant to this section, in*
 26 *an amount sufficient to deter violations. The electrical*
 27 *corporation's costs of meeting those resource adequacy*
 28 *requirements, including the costs associated with system*
 29 *reliability and local area reliability, that are found reasonable by*
 30 *the commission, shall be fully recoverable from those customers*
 31 *taking service from the electrical corporation, at the time the*
 32 *commitment to incur the cost is made or thereafter, on a fully*
 33 *nonbypassable basis pursuant to rates that are just and*
 34 *reasonable, as determined by the commission. The commission*
 35 *shall develop mechanisms that ensure cost recovery by electrical*
 36 *corporations for costs incurred in providing resource adequacy,*
 37 *that avoid shifting of costs, that avoid stranded costs, and that*
 38 *avoid cost responsibility surcharges. In addition to any remedy or*
 39 *enforcement power that the commission may exercise pursuant to*
 40 *Chapter 11 (commencing with Section 2100), an electrical*

1 *corporation shall not recover from ratepayers, any cost that*
2 *would have been avoided if the electrical corporation had*
3 *procured adequate generational resources as required by an*
4 *order or decision of the commission made pursuant to this*
5 *section.*

6 (d) For purposes of this section, “load serving entity” does not
7 include a local publicly owned electric utility as defined in
8 Section 9604, the State Water Resources Development System
9 commonly known as the State Water Project, or customer
10 generation, if the customer generation (1) takes standby service
11 from the electrical corporation on a commission-approved rate
12 schedule that requires the customer’s load serving entity to
13 provide for adequate backup planning and operating reserves for
14 that customer generation or (2) is not physically interconnected
15 to the transmission grid, so that if the customer generation fails,
16 backup power is not supplied from the electricity grid.

17 SEC. 2. Section 9620 is added to the Public Utilities Code, to
18 read:

19 9620. (a) Every local publicly owned electric utility serving
20 end-use customers, shall ensure that adequate physical generating
21 capacity dedicated to serving all of its load requirements is
22 available to meet peak demand and planning and operating
23 reserves, at or deliverable to locations and at times as may be
24 necessary to ensure local area reliability and system reliability, at
25 just and reasonable rates.

26 (b) Every local publicly owned electric utility shall report to
27 the State Energy Resources Conservation and Development
28 Commission, that information required by the commission
29 relative to the utility’s resource plan and status in meeting its
30 resource plan.

31 SEC. 3. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 certain costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the
36 penalty for a crime or infraction, within the meaning of Section
37 17556 of the Government Code, or changes the definition of a
38 crime within the meaning of Section 6 of Article XIII B of the
39 California Constitution.

1 As to certain other costs, no reimbursement is required by this
2 act pursuant to Section 6 of Article XIII B of the California
3 Constitution because a local agency or school district has the
4 authority to levy service charges, fees, or assessments sufficient
5 to pay for the program or level of service mandated by this act,
6 within the meaning of Section 17556 of the Government Code.

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